

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOSEPH ANTONETTI,

Plaintiff,

v.

E.K. MCDANIELS, *et al.*,

Defendants.

Case No. 3:16-cv-00396-MMD-WGC

ORDER

This is a closed case filed by an incarcerated litigant alleging violations of his constitutional rights while he was housed at Ely State Prison in Nevada. (ECF No. 132 at 1-2.) *Pro se* Plaintiff Joseph Antonetti filed a motion for reconsideration (ECF No. 138 (“First Motion”)) of the Court’s denial of his motion for extension of time (ECF No. 137) and a motion for reconsideration (ECF No. 139 (“Second Motion”)) of the Court’s order (ECF No. 133 (“Order”)) adopting Magistrate Judge William G. Cobb’s Report and Recommendation (ECF No. 132 (“R&R”)). Defendants filed responses to the First and Second Motions. (ECF Nos. 140, 141.) Antonetti filed a reply to Defendants’ responses. (ECF No. 142 (“Reply”).) Because Antonetti does not meet the reconsideration standard, and as further explained below, the Court will deny both the First and Second Motions.

Motions to reconsider are generally left to the Court’s discretion and must set forth “some valid reason why the court should reconsider its prior decision” and “facts or law of a strongly convincing nature to persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003) (citation omitted). Reconsideration is appropriate if this Court “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citation omitted). But “[a] motion for reconsideration is

1 not an avenue to re-litigate the same issues and arguments upon which the court already
2 has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005)
3 (citation omitted).

4 In his First and Second Motions, Antonetti argues that he filed his objection to the
5 R&R late (ECF No. 135 (“Objection”)) because the prison denied him legal materials,
6 delayed incoming and outgoing mail, and the Court mailed his documents to the wrong
7 address. (ECF Nos. 138 at 1-2, 139 at 1-2.) He therefore contends that the Court should
8 reconsider its prior Order and review his late Objection. (*Id.*) But Antonetti fails to meet
9 the standard that could permit the Court to grant a motion for reconsideration. In his First
10 and Second Motions, Antonetti does not provide the Court with any newly discovered
11 evidence, explain how the Court committed clear error in addressing his legal claims or
12 how the previous Order was manifestly unjust, or present changes in controlling law. See
13 *Sch. Dist. No. 1J*, 5 F.3d at 1263. That said, Antonetti raises some substantive arguments
14 in his Reply as to why the Court erred in its Order. (ECF No. 142 at 5-10.) However, the
15 Court cannot consider Antonetti’s new arguments because he did not raise them in his
16 First and Second Motions. See *Oracle USA, Inc. v. Rimini St., Inc.*, Case No. 2:10-cv-
17 0106-LRH-VCF, 2016 WL 6208254, at *2 (D. Nev. Oct. 24, 2016) (“[T]o the extent that a
18 party raises a new argument or proffers new evidence and information in a reply brief,
19 that argument or evidence is improper because the opposing party is deprived of an
20 opportunity to respond.”); see also *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th
21 Cir. 1993) (striking information raised for the first time in a reply brief); *Lindner v. Ford*
22 *Motor Co.*, Case No. 2:10-cv-00051-LDG(VCF), 2012 WL 3598269, at *2 (D. Nev. Aug.
23 17, 2012) (granting a motion to strike new arguments in a reply that did not arise out of
24 the initial reconsideration motion). The Court will accordingly deny the First and Second
25 Motions.

26 However, in his First Motion, Antonetti requested that the Court mail him copies of
27 his Objection (ECF No. 135) and its exhibits. (ECF No. 138 at 1.) As a one-time courtesy,
28 the Court will grant Antonetti’s request.

1 It is therefore ordered that Antonetti's motions for reconsideration (ECF Nos. 138,
2 139) are denied.

3 The Clerk of Court is directed to update Antonetti's address in the docket to 84533,
4 P.O. Box 1059 PNM.N., Santa Fe, NM 87504 and send Antonetti a copy of his objection
5 to Judge Cobb's Report and Recommendation (ECF No. 135), as well as any attached
6 exhibits.

7 This case remains closed.

8 DATED THIS 23rd Day of September 2021.

9
10 

11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28